IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2825 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANCHANPURI VJIVANPURI GOSAI

Versus

VITTALBHAI RAMANBHAI PATEL

Appearance:

1. First Appeal No. 2825 of 1999

MR MUKESH R SHAH for Appellant No. 1

MR NIRAL R MEHTA for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR AJAY R MEHTA for Respondent No. 3

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE C.K.BUCH

Date of decision: 20/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

When the matter was notified for admission and after considering the submissions made by counsel appearing in the matter and in view of the challenged made in this appeal for seeking modification of the Award in respect of awarding interest by the learned Tribunal in favour of the appellant - complainant, matter requires consideration and hence Admit. Mr. Niral R. Mehta, learned advocate waives for the respondent no. 1 and Mr. Ajay R. Mehta, learned advocate waives for the respondent no. 3 Insurance Company. Mr. Shah, learned advocate seeks permission to delete respondent no. 2. Accordingly, permission to delete respondent no. 2 is granted. By consent of counsel appearing in the matter, first appeal is fixed forthwith as the matter can be disposed of even without calling R & P in view of the relief sought for by the appellant - original claimant in respect of granting of interest on the amount of compensation in favour of the claimant. Mr. R.M.Shah, learned counsel appearing on behalf of the appellant has taken us through the award under challenge. As Mr. Shah has restricted his claim in the present appeal in respect of interest awarded by the Tribunal on the compensation awarded in favour of the claimant. As according to Mr. Shah, the Tribunal was not right in awarding the interest from the date of judgement and award and not from the date of filing of the application. As found from the Award, the appellant claimant has filed an application before the M.A.C. Tribunal at Godhara under Section 166 of the Motor Vehicles Act and it is the case of the claimant that on 26th July, 1994 when the claimant was standing at Kalol Bus Stand, at that time the opponent no. 1 came rashly and negligently on motor-cycle bearing No.: GJ-17-A-4488, belonging to opponent no. 2 and dashed with the appellant and the appellant had sustained injuries on the various parts of body and on right leg and sustained fracture and because of the injuries sustained by him, he was admitted in hospital for treatment and he was operated and even after the discharge from the hospital, his treatment was continue as an out-door patient for which, he has claimed compensation from the opponents for more than Rs. 1 lac and claimed interest at the rate of 24% p.a. The vehicle was insured with the opponent no. 3 - The New India Insurance Co. Ltd. The Tribunal while considering the evidence led by the parties had recorded the findings in respect of the claimant that the driver of the vehicle i.e. opponent no.1 was driving vehicle rashly and negligently and because of rash and negligent driving, the claimant had sustained injuries and the claimant is entitled to get compensation. While considering the

evidence led by the complainant on the point of quantum, the Tribunal has awarded compensation on different heads and total amount of Rs.61,000/- was awarded. As per the award passed by the Tribunal, the Tribunal has partly allowed the claim petition and the award was passed against all the three opponents and all the opponents were directed to pay compensation to the sum of Rs.14,500/- each by awarding interest at the rate of 12% p.a. from the date of application i.e. from 17th August, 1994 and on sum of Rs.45,600/- the claimant was entitled to get interest from the opponents at the rate of 12% p.a. from the date of order i.e. from 25.1.1999.

2. Mr. Shah, learned advocate for the appellant has placed reliance upon the decision of the Apex Court in the matter of UNITED INDIA INSURANCE CO. LTD ETC. ETC. Vs. PATRICIA JEAN MAHAJAN AND ORS. ETC. ETC. reported in JT 2002 (5) SC74 and unreported judgement of this Court in case of GSRTC Vs. GALABHAI MADHABHAI CHAUHAN dated 14.2.2002 (Coram : Y.B. Bhatt & M.H. Kadri, JJ..).

3. As found from the award, the Tribunal has while awarding interest, has granted interest in favour of the claimant at the rate of 12% p.a. on sum of Rs.14,500/- from the date of application i.e. from 17th August, 1994 and the Tribunal has Awarded interest at the rate of 12% p.a. on sum of Rs.45,600/- from the date of order i.e. from 25.1.1999.

4. Even the counsel appearing on behalf of the respondents have submitted that the Tribunal was not right while awarding the interest in favour of the claimant at the rate of 12% p.a. and the Tribunal ought to have awarded interest at the rate of 9% p.a. and the claimant is entitled to interest at the rate of 9% p.a. from the date of application. Mr. Shah, learned advocate appearing for the appellant has also conceded that the interest awarded by the Tribunal be reduced from 12% p.a. to 9% p.a. however, the claimant is entitled to interest at the rate of 9% p.a. from the date of application and not from the date of Award. Accordingly, present appeal is required to be allowed partly and the award passed by the Tribunal in respect of interest is modified and it is held that the appellant is entitled to an aggregate compensation in the sum of Rs.61,000/- together with running interest at the rate of 9% p.a. from the date of application i.e. from 17.8.1994 till the date of deposit / realisation by the respondents.

5. This appeal is, therefore, partly allowed with no order as to costs. Decree be drawn accordingly.

(D.K.Trivedi

(C.K.Buch, J.)
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